

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

PHILLIP M. ANGELLAN,

Plaintiff,

v.

MOSHE ZOREA,

Defendant.

Case No. 3:22-cv-00134-SLG

**ORDER RE REPORT AND RECOMMENDATION TO DISMISS**

Before the Court at Docket 1 is Plaintiff Phillip M. Angellan's *Prisoner's Complaint under the Civil Rights Act, 42 U.S.C. § 1983* (hereinafter "Complaint") and Mr. Angellan's application to waive prepayment of the filing fee at Docket 3. These matters were referred to the Honorable Magistrate Judge Kyle F. Reardon. At Docket 7 Judge Reardon issued a *Report and Recommendation to Dismiss* without prejudice for failure to state a claim upon which relief may be granted. No objections to the *Report and Recommendation to Dismiss* have been filed.

The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1). That statute provides that a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."<sup>1</sup> A court is to "make a de novo determination of those portions of the magistrate judge's report

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<sup>1</sup> 28 U.S.C. § 636(b)(1).

or specified proposed findings or recommendations to which objection is made.”<sup>2</sup> However, § 636(b)(1) does not “require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”<sup>3</sup>

The Court has reviewed the *Report and Recommendation to Dismiss* and agrees with its analysis. Accordingly, the Court adopts the *Report and Recommendation to Dismiss* in its entirety, and IT IS ORDERED that this action is DISMISSED WITHOUT PREJUDICE for failing to state a claim on upon which relief may be granted. The application to waive prepayment of the filing fee is DENIED AS MOOT. This dismissal shall be a strike as required by 28 U.S.C. § 1915(g) and *Lomax v. Ortiz-Marquez, et al.* 590 U.S. \_\_\_, 140 S.Ct. 172 (2020).<sup>4</sup>

The Clerk of Court is directed to enter a final judgment accordingly.

DATED this 19th day of October, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> *Id.*

<sup>3</sup> *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

<sup>4</sup> 28 U.S.C. § 1915(g) prohibits a prisoner who has filed more than three actions or appeals in any federal court in the United States that are dismissed as frivolous or malicious or for failure to state a claim upon which relief may be granted, from bringing any other actions without prepayment of fees unless the prisoner can demonstrate that he or she is in “immediate danger of serious physical injury.”